

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

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No. 590.

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE,  
ET AL., APPELLANTS,

VS.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS  
VIVIAN COTTON MILLS, ET AL.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF NORTH CAROLINA.

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FILED OCTOBER 9, 1921.



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ET AL., APPELLANTS,

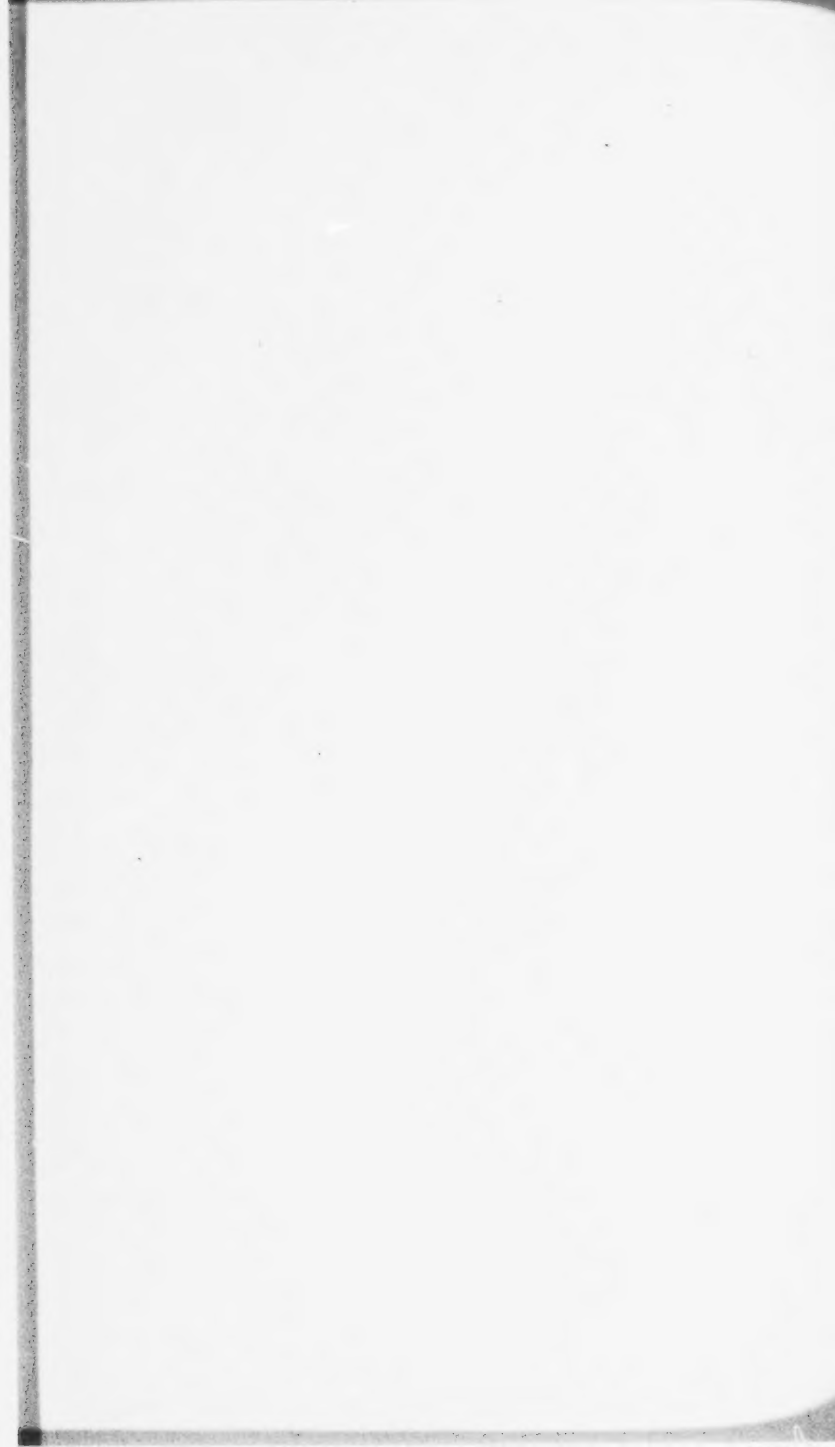
vs.

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VIVIAN COTTON MILLS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF NORTH CAROLINA.

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*Transcript of record.*

Supreme Court of the United States.

October Term, 1921.

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE,  
and Claude Moser, Deputy Collector of Internal  
Revenue, appellants,

*vs.*

JOHN J. GEORGE, TRADING AND DOING BUSINESS  
as Vivian Cotton Mills, and Vivian Spinning  
Company.

Appeal from the District Court of the United States for the Western  
District of North Carolina.

Filed October , 1921.

2A UNITED STATES OF AMERICA, *Sct.:*

Be it remembered that heretofore, to wit, on the 7th of July, 1921, a bill of complaint was filed in the office of the clerk of the District Court of the United States for the Western District of North Carolina, at Greensboro, North Carolina, in the case wherein John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company are plaintiffs, and J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue, are defendants.

Said bill of complaint, filed July 7, 1921, is in words and figures as follows, to wit:

2 UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

In the United States District Court, at Charlotte.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS VIVIAN  
Cotton Mills, and Vivian Spinning Company,  
*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE, AND CLAUDE  
Moser, deputy collector of internal revenue, defendants.

Bill.

*In equity.*

Your petitioners respectfully sheweth to the court:

One.—That your petitioner, John J. George is a resident of the State of North Carolina, of the Western District, and was a resident of said State and district in the year 1919, and at that time was engaged in the textile business, manufacturing cotton yarns, at Cherryville, North Carolina, doing business under the name and style of Vivian Cotton Mills.

Two.—That your petitioner, Vivian Spinning Company, is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business in the Western District of said State, same being in Cherryville, Gaston County. That this petitioner was organized for the purpose of and did, in the year 1921, take over the property of and the business of and is now the owner and possessor of the property known as the Vivian Cotton Mills.

Three.—That the defendant, J. W. Bailey, is collector of internal revenue for the Fourth District of the United States, residing at Raleigh, North Carolina, and the defendant, Claude Moser, one of his deputies, is a resident of Gastonia, in the Western District of North Carolina.

Four.—That your petitioner and complainant, John J. George, was the owner of and operating the Vivian Cotton Mills and engaged in the manufacture of cotton yarns and the sale of the product of the mill during the years of 1919 and 1920. That by an assessment dated November 9, 1920, the Commissioner or Acting Commissioner of Internal Revenue of the United States at Washington, District of Columbia, attempted to assess the sum of \$2,098.06, due November 19, 1920, with a penalty of five percent, with interest at one percent per month from due date until paid, against this petitioner and against the property of your petitioner, Vivian Spinning Company, and has ordered that the defendant, Bailey, collector of internal revenue as aforesaid, do collect said assessment with penalty and interest, and that if the same is not paid to seize the property of the petitioners and sell the same to satisfy and pay the said alleged assessment; that the said J. W. Bailey, collector, has transmitted said orders to his deputy, Claude Moser, and has directed that said deputy carry out the said orders of the Commissioner of Internal Revenue.

Five.—Your petitioners are informed and believe that said attempted assessment is made against your petitioners and their property under Title XII, revenue act of 1918, and commonly known as the child labor act, and was made by said Commissioner of Internal

Revenue, who claims and avers that during the taxable year 1919 your petitioners, Vivian Cotton Mills, employed in their mills children under 14 years of age, and children between 14 years and 16 years of age more than 8 hours a day, after 7 p. m. and before 6 a. m.

Six.—That your petitioner, Vivian Cotton Mills, did not employ children in its mill in violation or derogation of said act to the knowledge of your petitioner; that your petitioner, John J. George, trading and doing business as Vivian Cotton Mills, through his superintendent, overseers, and other officers in authority in said mill made a careful investigation when children applied for employment in said mill and when there was any doubt in the minds of said superintendent and overseers of said mills as to whether or not the child applying was 14 years of age, the said John J. George refused

to employ the said child, and where after careful investigation there was any doubt as to whether the child applying was over 16 years of age said child was not employed more than eight hours per day or after 7 p. m. or before 6 a. m. And your petitioner employed no children more than eight hours a day, after 7 p. m. and before 6 a. m. unless said children were unquestionably over 16 years of age, or unless said children had cards or permits from the Federal inspectors from the Treasury Department issued under the rules and regulations of said department.

Seven.—That a warrant of distraint for the purposes of levying upon and selling the property of your petitioners, to satisfy said assessment has been placed, your affiant is informed and believes, in the hands of Claude Moser, or some other person, as deputy collector of internal revenue and that said deputy or deputies will levy upon and sell the personal and real property of your petitioners thereunder, for the collection of said unlawful and wrongful assessment, unless said collector of internal revenue and said deputies are restrained by order of this honorable court.

Eight.—That your petitioners have not been given a civil or criminal trial, to which they are entitled by law before their property can be taken and condemned, and they are advised, informed, and believe and allege that the said attempted assessment by the Commissioner of Internal Revenue or Acting Commissioner of Internal Revenue of the United States, and the attempted enforcement and collection of the said assessment by J. W. Bailey and his deputy or deputies is illegal, without warrant of or authority of law, and in violation of the due process clause of the Constitution of the United States.

Nine.—That the market for cotton mills and cotton-mill stock and cotton-mill products is unusually low, there being practically no market now, and should the said Commissioner of Internal Revenue be allowed to sell your petitioners' property for the purpose of collecting this illegal assessment your affiant is informed and believes that it would occasion your petitioners a loss of approximately \$50,000 and a great and irreparable damage and loss would be otherwise inflicted on your petitioners.

Ten.—That by letter dated December 21, 1920, the Acting Commissioner of Internal Revenue advised your petitioners to file a claim for abatement of the tax, which said claim was duly filed and was disallowed, as these petitioners are informed and believe, and the said J. W. Bailey, collector, and his deputies instructed to proceed to sell your petitioners' property under said warrant of distraint.

4      Eleven—Your petitioners are informed and so believe and allege that said Title XII, revenue act of 1918, and other laws under which this assessment was made and under which the said J. W. Bailey, collector, and his deputies are about to proceed to sell the property of your petitioners are illegal, void, and unconstitutional and in derogation of the Constitution of the United States in

the following respects: (a) In that said act and the attempted enforcement and collection of said assessment and the sale of petitioner's property thereunder is in violation of Article Five of the Constitution in that it is depriving your petitioners of their property without due process of law; (b) in that it is a violation 'f Article VII of the said Constitution in that it denies the right of trial to your petitioners by jury; (c) in that the said act or so much thereof as applies to the assessment of said tax and the attempted levy on and sale of your petitioner's property is in violation 'f the said Constitution and unconstitutional in that it is in violation of *of* Article X of said Constitution in that this attempted levy and assessment is not a power delegated to the United States by the Constitution, but is a power reserved to the States and to the people.

Twelve—That these your petitioners have exhausted all legal remedies and it is necessary for them to be given equitable relief in the premises.

Wherefore, your petitioners pray:

(1) That the defendants, their servants and agents and successors in office of the defendants and their servants and agents, be enjoined and restrained from levying upon and selling the plaintiff's property or any part thereof to satisfy and pay said attempted assessment.

(2) That the said assessment of taxes upon the petitioners and the attempted levy and sale thereunder of your petitioners' property be declared illegal, null, void, and unconstitutional.

(3) For such other and further relief in the premises as the nature and equity of this action may require and to this Honorable Court may seem just and equitable.

C. B. FETNER,

*Attorney for Petitioners.*

UNITED STATES OF AMERICA,

*Western District of North Carolina:*

John J. George, one of the above names petitioners, being first duly sworn, deposes and says that he has read the foregoing petition, that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

JOHN J. GEORGE.

A true copy.

Sworn and subscribed before me, this 7 day of July, 1921.

(Signed)

M. C. MANNLY,

*Notary of Public.*

My commission expires the 12 day of Dec. 1921.

Test:

R. L. BLAYLOCK,

*Clerk,*

By E. S. WILLIAMS,

*Dep. Clerk.*



On July 6, 1921, prosecution bond was executed and filed by the plaintiffs, John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company, and T. C. Summer, principals and surety.

Said prosecution bond, filed July 6, 1921, is in words and figures as follows, to wit:

UNITED STATES OF AMERICA,  
Western District of North Carolina.

District Court at Charlotte.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS  
Vivian Cotton Mills, and Vivian Spinning Com-  
pany

*against*

Prosecution  
bond.

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE AND  
Claude Moser, deputy collector of internal revenue,  
defendants.

Know all men by these presents, that we, John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company, principals, and T. C. Summer, sureties, are held and firmly bound unto the defendants in the above-entitled action in the sum of two hundred dollars (\$200.00) to the payment of which we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated the 6th day of July, 1921.

The condition of the above obligation is such that whereas the said Vivian Cotton Mills and Vivian Spinning Company, plaintiffs in the above-entitled cause, have this day brought action against the defendants therein: Now, if the said plaintiffs shall prosecute their said action with effect, or in case they fail therein, shall well and truly pay to the said defendants all such costs and damages as shall be awarded and recovered against the said plaintiff, then the above obligation to be void, otherwise to remain in full force and effect.

VIVIAN COTTON MILLS,

By JOHN J. GEORGE, *Owner*. [SEAL.]

VIVIAN SPINNING COMPANY. [SEAL.]

By JOHN J. GEORGE, *Pres*. [SEAL.]

T. C. SUMMER. [SEAL.]

Taken and acknowledged before me this 6th day of July, 1921.

M. C. MAUNEY,  
*Notary Public.*

My commission expires the 12th day of Dec., 1921.

7 And on the 7th day of July, 1921, subpœna in equity was issued.

Said subpœna in equity, issued July 7, 1921, is in words and figures as follows, to wit:

8 UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

In the District Court, Fourth Circuit, at Charlotte, N. C.


*The President of the United States of America, to the U. S. Marshal of the Western District of North Carolina, Greeting:*

You are hereby commanded, to summons J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue, citizens of and residents in the State of North Carolina, if they be found in your district, to be and appear in the District Court of the United States for the Western District of North Carolina aforesaid, at Charlotte, on the 26th day of July, 1921, next, to answer a certain bill in chancery, filed and exhibited in said court, against J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue, by John J. George, trading and doing business as Vivian Cotton Mills and Vivian Spinning Company, citizen of and resident in the State of North Carolina, to receive, perform, and abide any order, judgment, or decree of the court made therein.

Hereof you are not to fail, under the penalty of law thence ensuing, and have you then and there this writ.

Witness, The Hon. E. Y. Webb, judge of the District Court of the United States, at Charlotte, in said district, the 7th [SEAL.] day of July, 1921, and in the one hundred and forty-six year of the Independence of the United States.

Issued the 7th day of July, 1921.

R. L. BLAYLOCK,   
*Clerk.*

By E. S. WILLIAMS,  
*Deputy Clerk.*

The defendant is required to file his answer or other defense in the clerk's office on or before the 20th day after service, excluding the day thereof, otherwise the bill may be taken pro confesso.

Rec'd, July 11th, 1921. Executed 7-11-21 as to Claude Moser, by reading the within summons and leaving a true copy of same with the defendant, Claude Moser.

CHAS. A. WEBB,  
*Marshall,*  
By C. W. RUSSELL,  
*D. M.*

Received at Raleigh July 12th, 1921. Executed at Raleigh July 12th, 1921, by leaving summons with J. W. Bailey, collector internal revenue.

GEO. H. BELLAMY,  
*U. S. Marshal.*  
B. H. MEADOWS,  
*D. M.*

Marshal's fees, \$2.00.

9 Bond for restraining order was thereupon filed, on July 7, 1921.

Said bond filed on July 7, 1921, is in words and figures as follows, to wit:

10 UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

District Court at Charlotte, Fourth Circuit.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS  
Vivian Cotton Mills, and Vivian Spinning Com-  
pany.

*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE  
and Claude Moser, deputy collector of internal  
revenue, defendants.

Bond for  
restraining  
order.

Know all men by these presents, that we, John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company, principals, and T. C. Summer as surety, are held and firmly bound unto the defendants in the above-entitled action in the sum of two hundred dollars, to the payment of which we bind ourselves firmly by these presents. Sealed with our seals and dated this 6th day of July, 1921.

The condition of the above obligation is such that whereas the plaintiffs in the above-entitled action have brought an action against the said defendants therein, and have obtained a restraining order against the said defendants therein; now, therefore, if the said plaintiff shall well and truly pay said defendants all such costs and damages as they may sustain by reason of the granting of said restraining order in the event the court shall finally determine that the plaintiff is not entitled thereto, then the above obligation is to be null and void; otherwise it is to remain in full force and effect.

JOHN J. GEORGE. [SEAL]  
VIVIAN SPINNING CO.,

By JOHN J. GEORGE, *President.*  
T. C. SUMMER. [SEAL]

Taken and acknowledged before me this 6th day of July, 1921.

M. C. MAUNEX,  
*Notary of Public.*

T. C. Summer, being duly sworn, says that he is the surety whose name is signed to the above undertaking; that he is a resident of and has property within the Western District of the State of North Carolina, to the amount of two hundred dollars, not exempt from execution and is excess of his debts and liabilities.

Sworn to and subscribed before me, this 6 day *day* of July, 1921.

M. C. MAUNEY,  
*Notary Public.*

My commission expires 12th day of December, 1921.

Above bond approved this 7th day of July, 1921.

E. S. WILLIAMS,  
*Deputy Clerk, U. S. District Court.*  
R. L. BLALOCK, *Clerk.*  
E. S. WILLIAMS, *Dep. Clerk.*

12 And afterwards, to wit, on July 8, 1921, temporary restraining order was issued, said restrain'g order, filed on July 8, 1921, is in words and figures as follows, to wit:

13 UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

District Court at Charlotte.

JOHN J. GEORGE, TRADING AND DOING business as Vivian Cotton Mills, and Vivian Spinning Company, <i>against</i>	} Restraining order.
J. W. BAILEY, COLLECTOR OF INTERNAL revenue, and Calude Moser, deputy collector of internal revenue, de- fendants.	

This cause coming on to be heard before me at chambers at Asheville, North Carolina, upon the bill of complaint duly verified according to law, and the same for the purpose of this motion appearing to be true:

It is ordered, adjudged, and decreed that the defendants, their servants and agents and their successors in office, be and are hereby restrained from levying upon or selling the property of the complainants until the further order of this court.

And it is further ordered, adjudged and decreed that the defendants, and their successors in office, be and they are hereby ordered and directed to appear before me at Greensboro, N. C., on the 16th day of July, 1921, and show cause, if any they have, why this restraining order should not be continued until the hearing or made permanent in accordance with the law and the facts in the premises.

This order shall not become effective, however, until the complainants shall give bond in the sum of two hundred dollars, with good and sufficient surety to be approved by the deputy clerk of the United States District Court at Charlotte, North Carolina, conditioned to pay the defendants such damages as they may sustain by reason of the granting of this order in the event the court shall finally determine that the plaintiffs were not entitled thereto.

This 8th day of July, 1921.

J. E. BOYD,  
*United States Judge.*

Bond in the sum of \$200.00 filed and approved.

E. S. WILLIAMS, *Dep. Clerk.*

14 And on July, 1921, affidavits were filed by H. D. George, W. J. Friday, J. D. Frye, L. W. McGinnas, and H. D. George, respectively, said affidavits being in words and figures as follows, to wit:

15 UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

District Court at Charlotte, Fourth Circuit.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS VIVIAN Cotton Mills, and Vivian Spinning Company,	} Affidavit.
<i>against</i>	
J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE, AND Claude Moser, deputy collector of internal revenue, defendants.	

Personally appeared before me this day H. D. George, who, after being duly sworn, deposes and says:

That he was general superintendent of the Vivian Cotton Mills for the year 1919, during which time the alleged violations of the Federal child labor law occurred, and that during said time no child under the age of fourteen years was allowed to work in said Vivian Cotton Mills, nor was any child allowed to work therein between the ages of fourteen and sixteen years longer than eight hours in any one day, or more than six days in any week, or before 6 a. m. or after 7 p. m. during any portion of the taxable year, where it was known to me or any of the other officers of said Vivian Cotton Mills. That it was the strict policy of the owners and operators of the Vivian Cotton Mills to immediately discharge all children upon receiving any information whatsoever that they were under the legal age of 14 years, and to carefully guard the working hours of those between the ages of fourteen and sixteen years. That it was the further policy of the owners and operators of said Vivian Cotton

Mills to thoroughly investigate, where there was any question of any child's age who was seeking employment in the said mills.

H. D. GEORGE.

Subscribed and sworn to before me this the 7th day of July, 1921.

M. C. MAUNLY, N. P.

My com. expires Dec. 12, 1921.

16 UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

District Court at Charlotte, Fourth District.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS  
Vivian Cotton Mills, and Vivian Spinning  
Company,

*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE,  
and Claude Moser, deputy collector of inter-  
nal revenue, defendants.

Affidavit.

Personally appeared before me this day W. J. Friday, who, after being duly sworn, deposes and says:

That he was superintendent of the Vivian Cotton Mills during the year 1919, and in direct charge of said mills, and in the employment of all labor used in said mills. That to his own personal knowledge no child under the age of 14 years was allowed to work in said mills during said time. That no child under the age of sixteen, and more than fourteen years of age was allowed to work in said mills during the year 1919, except in daylight, and only then during legal hours, and by permit. That where any question arose as to the age of any child, a careful investigation was made, and when any child's age was found questionable, it was immediately discharged. That except in the case of Novella Quinn was there any question as to the age of any child working in said mills while he was superintendent, and she was immediately discharged when it became doubtful that she was of legal age to work therein. That this was the only case where any question arose, and called to their attention by an inspector.

J. W. FRIDAY.

Subscribed and sworn to before me this the 7th day of July 1921.

M. C. MAUNLY, N. P.

My commission expires Dec. 12, 1921.

17 UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

District at Charlotte, Fourth District.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS Vivian Cotton Mills, and Vivian Spinning Company <i>against</i>	} Affidavit.
J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE, and Claud Moser, deputy collector of internal revenue, defendants.	

Personally appeared before me this day, J. D. Fry, who, after being duly sworn, deposes and says:

That he was an overseer in the spinning room of the Vivian Cotton Mills during the year 1919, and that during said time no child under the age of 14 years was allowed to work therein where it was known. That no child between the ages of fourteen and sixteen years was allowed to work in said mills except in daylight, and only then during the legal hours, and by permit. That it was the policy of the mill owners and operators to carefully investigate the age of any child where it was questionable, and where it was found to be doubtful the child was immediately discharged.

J. D. FRY.

Subscribed and sworn to before me this the 7th day of July, 1921.

M. C. MAUNEY, N. P.

My com. expires December 12, 1921.

18 UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

District Court at Charlotte, Fourth District.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS Vivian Cotton Mills, and Vivian Spinning Company <i>against</i>	} Affidavit.
J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE, and Claud Moser, deputy collector of internal revenue, defendants.	

Personally appeared before me this day, Webb McGinnas, who, after being duly sworn, deposes and says:

That he was an overseer in the spinning room of the Vivian Cotton Mills during the year 1919, and that during said time no child under the age of 14 years was allowed to work therein where it was

known. That no child between the ages of fourteen and sixteen years was allowed to work in said mills except in daylight, and only then during the legal hours, and by permit. That it was the policy of the mill owners and operators to carefully investigate the age of any child where it was questionable, and where it was found doubtful the child was immediately discharged.

L. W. MCGINNIS.

Subscribed and sworn to before me this the 7th day of July, 1921.

[SEAL.]

M. C. MAUNEY,

*Notary Public.*

My com. ex. Dec. 12, 1921.

19 UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

District Court at Charlotte, Fourth Circuit.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS  
Vivian Cotton Mills, and Vivian Spinning  
Company

*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE,  
and Claude Moser, deputy collector of inter-  
nal revenue, defendants.

Affidavit.

Personally appeared before me this day, H. D. George, who, after being duly sworn, deposes and says:

That he was general superintendent of the Vivian Cotton Mills during the year 1919. That during the year 1920, W. E. Younts visited the Vivian Cotton Mills, and obtained a report with reference to the employment of children in said mills. That he, the said H. D. George, had never made one of these reports previous to that time, and did not understand filling out said report and that he answered as directed by Mr. Younts. That he understood that he reported no children between the ages of fourteen and sixteen years, except where permits had been given, and then only during the legal hours, were working in said mills, or had ever worked in said mills, except under conditions as above set forth. That he has been informed the report states that children under the age of fourteen years had worked therein during the year 1919. That if he made that statement, it was an error, since he knew then as he knows now that no child under the age of 14 years had ever worked in said mills since the enactment of the child labor law where it was known to the owners and operators of the mills. This report was C. L. T. 17.

(Signed) H. D. GEORGE.

Subscribed and sworn to before me, this July 7, 1921.

M. C. MAUNEY, N. P.

My com. expires Dec. 12, 1921.



20 And afterwards, to wit, on July 16, 1921, an order was filed, restraining defendants from levying upon or selling the property of the complainants until further order of the court.

Said restraining order, filed July 16, 1921, is in words and figures as follows, to wit:

21 In the District Court of the United States for the Western District of North Carolina, at Charlotte.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS VIVIAN Cotton Mills, and Vivian Spinning Company, plaintiff,	} Order.
<i>vs.</i>	
J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE, AND CLAUD Moser, deputy collector of internal revenue, defendants.	

This cause coming on to be heard before me at chambers at Greensboro, North Carolina, it is ordered and adjudged that the petitioners in this cause be and they are allowed to amend the bill heretofore filed in this cause by adding to paragraph eleven of said bill, subsection D, as set forth in the petition dated and filed the 16th day of July, 1921.

This cause coming to be heard upon the bill of complaint and the duly verified amended complaint of petition.

It is ordered, adjudged, and decreed, that the defendants, their servants and agents, and their successors in office, be, and they are hereby, restrained from levying upon or selling the property of the complainants until the further order of the court.

And it is further ordered, adjudged, and decreed, that the defendants and their successors in office, be, and they are hereby, ordered and directed to appear before me at Greensboro, on the 1st day of August, 1921, and show cause, if any they have, why this restraining order should not be continued until the hearing, or made permanent in accordance with the law and the facts in the premises.

It is further ordered that a copy of the amended bill, together with a certified copy of this order, be mailed to each of the said defendants at their respective addresses by the deputy clerk at Charlotte.

The clerk will enter this order at Charlotte.

This the 16th day of July, 1921.

(Signed)

J. E. BOYD.

*U. S. Judge.*

22 And on the 16th day of July, 1921, an amendment to bill of complaint was filed in the office of the clerk of the District Court of the United States for the Western District of North Carolina, at Greensboro, North Carolina, in said case, said amendment to bill of complaint, filed July 16, 1921, is in words and figures as follows, to wit:

23 UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

In the United States District Court at Charlotte.

JOHN J. GEORGE, TRADING AND DOING  
 business as Vivian Cotton Mills, and  
 Vivian Spinning Company

*vs.*

J. W. BAILEY, COLLECTOR OF INTERNAL  
 revenue, and Claude Moser, deputy  
 collector of internal revenue, de-  
 fendants.

Amendment to bill.

In equity.

Your petitioners beg leave to amend the bill heretofore filed in this cause by adding to paragraph eleven of said bill subsection (d) as follows:

ELEVEN.

(d) In that, as will appear from the very terms and provisions of the act itself, it is in no sense a tax measure, intended to raise revenue, but it is in fact an attempted regulation of the hours of labor permitted in factories and mines within the several States, and the alleged assessment above referred to is in no sense a tax but is in fact equivalent to a fine or penalty imposed upon any manufacturer failing to comply with the attempted regulation of hours of labor and age of employees, and that the said fine or penalty has been imposed on the petitioner without an opportunity for him to be heard, and that the said warrant of distraint has been placed in the hands of the officer for the purpose of levying upon and selling the property of the petitioner, although he is not in fact liable for said fine or penalty and although he has been given no opportunity to be heard.

UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

John J. George, one of the above-named petitioners, being first duly sworn, deposes and says that he has read the foregoing amendment to the petition; that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

(Signed) JOHN J. GEORGE.

Sworn and subscribed before me this the 16 day of July, 1921.

R. L. BLAYLOCK,  
*Clerk U. S. Court.*

24 And thereafter, to wit, on the 16th day of July, 1921, an answer was filed.

Said answer filed July 16, 1921, is in words and figures as follows, to wit:

25 (Copy)

UNITED STATES OF AMERICA,  
*Western District of North Carolina.*

In the United States District Court, at Charlotte.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS  
Vivian Cotton Mills, and Vivian Spinning Com-  
pany,

*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE, AND  
Claude Moser, deputy collector of internal rev-  
enue, defendants.

} Answer.

In equity.

The answer of the above-named defendants to the bill of complaint of the above-named petitioners.

The defendants answering the bill and amended bill of the petitioners, say:

1st. That they admit the allegations contained in paragraph one of the said bill.

2nd. That they admit the allegations contained in paragraph two of the said bill, except that they have no information upon which to form a belief as to the truth of the allegations that the Vivian Spinning Company was organized for the purpose of taking over the property of the Vivian Cotton Mills.

3rd. That they admit the allegations contained in paragraph three of the said bill.

4th. That they admit the allegations contained in paragraph four of the said bill, except that they deny that the assessment levied and penalty imposed as set forth in said bill was an attempted levy, but was in fact, a lawful assessment levied under the authority of the laws of the United States.

5th. That they admit the allegations contained in paragraph five of the said bill, except that they deny that said assessment was an "attempted," but in fact, a lawful assessment levied under the authority of the laws of the United States.

6th. That they deny the allegation contained in paragraph six of said bill.

26 7th. That they admit the allegations contained in paragraph seven of the said bill.

8th. That they deny the allegations contained in paragraph eight of the said bill; that they have no information upon which to form

a belief as to the allegations contained in paragraph nine of the said bill.

10th. That they deny the allegations contained in paragraph ten of the said bill.

11th. That they deny the allegations contained in paragraph eleven of the said bill.

12th. That they deny the allegations contained in paragraph twelve of the said bill.

13th. That they deny the allegations contained in the amendments of paragraph eleven of the original bill and filed in this case as "Amendment to bill."

The defendants further answering the petitioners say:

1. That the petitioners herein, to wit, John J. George, trading and doing business as the Vivian Cotton Mills, and the Vivian Spinning Company, filed a report in the office of J. W. Bailey, collector of internal revenue, and in the Office of Internal Revenue, Washington, on what is known as Form 17, Child Labor Tax, admitting that he and it has worked children during the taxable year 1919 in violation of title twelve, revenue act of 1918, in that he and it admitted in said form that they employed children under 16 years of age for more than eight hours per day, and further admitted that they employed children under 16 years of age between the hours of 7 p. m. and 6 a. m. during the taxable year 1919.

2. That during or for the taxable year 1919 the said petitioners John J. George, trading and doing business as the Vivian Cotton Mills, and Vivian Spinning Company, made a report on what is known as Form 18, Child Labor Tax, in which they admitted that their profits for the taxable year 1919 were a certain definite sum as shown on said report, and upon these profits the assessment of 27 10%, amounting to \$2,098.06, were levied, together with penalty of 5% with interest at 1% per month from Nov. 19th, 1920, the date of assessment, all as required and authorized by said revenue act of 1918.

3. That the revenue act for 1918, particularly title 12 of said act, is a valid and lawful act of Congress of the United States, and is not in violation or in derogation of article 5 or article 7 of the Constitution of the United States of America or any other article of said Constitution; and that the said assessment and levy thereunder is in every way legal, lawful, regular, and constitutional.

Wherefore the defendants pray that relief asked for by the petitioners in paragraphs 1, 2, and 3 of their prayer be denied and that the restraining order herein be dissolved and the defendants be allowed to proceed as authorized by said title 12 of revenue act 1918 and the said bill be dismissed with costs.

S. J. DURHAM,

*U. S. Attorney.*

By HAMILTON C. JEREY,

*Asst. U. S. Attorney.*

UNITED STATES OF AMERICA,

*Western District of North Carolina.*

Claude Moser, one of the above-named defendants, being first duly sworn, deposes and says that he has read the foregoing answer and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

CLAUDE A. MOSER.

Sworn to and subscribed before me this the 7th day of August, 1921.

D. T. APPLEGATE,  
*Notary Public.*

My commisison expires the 19th day of Aug., 1922.

28 And thereafter, to wit, on August 1, 1921, an order was issued, continuing said cause until Monday, August 8, 1921. Said order, filed August 1, 1921, is in words and figures as follows, to wit:

29 In the District Court of the United States for the Western District of North Carolina.

JOHN J. GEORGE, TRADING AS VIVIAN COTTON Mills; Vivian Spinning Company, plaintiffs, vs. J. W. BAILEY, COLLECTOR, C. A. MOSER, DE- fendants.	}	Order.
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On motion of S. J. Durham, United States attorney, this cause is continued until Monday, August 8, 1921, and the defendants are allowed to file on or before that date their answer in said cause or such pleadings as they may deem proper.

This the 1st day of August, 1921.

J. E. BOYD,  
*United States Judge.*

30 On August 1, 1921, an order allowing defendants to withdraw demurrer, and continuing cause until Monday, August 8, 1921, was filed.

Said order filed August 1, 1921, is in words and figures as follows, to wit:

31 In the District Court of the United States for the Western District of North Carolina, at Charlotte.

JOHN J. GEORGE, TRADING AND DOING BUSINESS  
as Vivian Cotton Mills, and Vivian Spinning  
Company, plaintiffs,

*vs.*

Order.

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE,  
and Claud Moser, deputy collector of internal  
revenue, defendants.

This cause coming on to be heard before me at chambers at Greensboro, North Carolina, it is ordered and adjudged that the defendants be allowed to withdraw the demurrer heretofore filed in this cause.

It is further ordered that this cause be continued until Monday, August 8th, 1921, and that the restraining order heretofore made in this cause be continued until that date.

It is further ordered that the defendants in this cause be allowed until August 8, 1921, to file an answer in this cause, and that they appear before me on that date to show cause, if any, why the restraining order heretofore made should not be continued until the final hearing.

The clerk will enter this order at Charlotte.

This the 1st day of August, 1921.

J. E. BOYD,

*United States Judge.*

32 And thereafter, on August 5, 1921, a motion to dismiss was filed.

Said motion to dismiss, filed August 5, 1921, is in words and figures as follows, to wit:

33 In the District Court of the United States for the Western District of North Carolina, at Greensboro.

JOHN J. GEORGE, TRADING AS VIVIAN COTTON MILLS, AND  
Vivian Spinning Company,

*vs.*

Motion.

J. W. BAILEY, COLLECTOR, AND C. A. MOSER.

S. J. Durham, United States attorney, appearing on behalf of the defendants, moves to dismiss the cause for that on the face of the complaint it is an action seeking to enjoin the collection of taxes, and the court is without jurisdiction, to hear and determine the issues raised.

S. J. DURHAM,

*U. S. Attorney.*

This the 5th day of August, 1921.

34 And afterwards, to wit, on August 8, 1921, an order was filed adjourning said cause until Monday, August 15, 1921.

Said order of adjournment, filed August 8, 1921, is in words and figures as follows, to wit:

35 In the District Court of the United States for the Western District of North Carolina.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS VIVIAN Cotton Mills, and Vivian Spinning Company, complainants,

*vs.*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE, AND CLAUDE Moser, deputy collector of internal revenue, defendants.

Order.

This case coming on to be heard to-day, upon plaintiffs' motion for injunction, and it appearing that in the meantime, defendant has filed an answer, of which plaintiffs' counsel has not been advised;

It is ordered that the further hearing of the case be adjourned until Monday the 15th day of August, 1921, at 2.30 o'clock p. m.

In the meantime the order of restraint as heretofore issued shall remain in full force.

This the 8th day of August, 1921.

The clerk will enter at Charlotte and mail copy to counsel of record.

JAS. E. BOYD,  
*U. S. District Judge.*

A true copy: Test:

R. L. BLAYLOCK,  
*Clerk,*  
By E. S. WILLIAMS,  
*Deputy Clerk.*

36 And on August 15, 1921, an order was filed, adjourning said cause until Monday, August 22, 1921.

Said order, filed August 15, 1921, is in words and figures as follows, to wit:

37 In the District Court of the United States for the Western District of North Carolina, at Greensboro.

JOHN J. GEORGE, TRADING AS VIVIAN COTTON MILLS, and Vivian Spinning Company, complainants,

*vs.*

J. W. BAILEY, COLLECTOR, AND CLAUDE MOSE, DEPUTY collector, defendants.

Order.

This case coming on to be heard to-day, the plaintiffs being represented by C. B. Fenner, Esq., and the defendants by S. J. Durham,

Esq., United States attorney. At the suggestion of the court the case is further adjourned to Monday, the 22nd day of August, 1921, for final hearing upon the bill and answer and upon defendants' motion to dismiss for want of jurisdiction. In the meantime both parties are allowed to file briefs, provided the same are on file before the 19th instant.

The clerk will enter.

This the 15th day of August, 1921.

J. E. BOYD,  
*United States Judge.*

38 And thereafter, to-wit, on August 22, 1921, and order was filed, decreeing that temporary restraining order be made permanent, forbidding defendant to proceed to collect said assessment.

Said restraining order, dated August 22, 1921, is in words and figures as follows, to wit:

39 In the District Court of the United States for the Western District of North Carolina.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS  
Vivian Cotton Mills, and Vivian Spinning Com-  
pany, plaintiff,

*vs.*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE,  
and Claud Moser, deputy collector of internal  
revenue.

} Order.

This case coming on to be heard upon the bill of complaint of the complainant and the answer of the defendant, and it being admitted by the answer, as alleged in the complaint; that the complainant is a resident of Gaston County, North Carolina, and operates a manufacturing plant for the production of cotton goods, and that the defendant is collector of internal revenue for the State of North Carolina; that on the alleged ground that complainant has employed child labor in its manufactory in violation of section #1200 of an act of Congress to provide revenue and for other purposes, approved February 24, 1919 (vol. 40, Stat. at Large, part 1, page 1057).

That complainant filed claim for abatement of the said taxes (which amount to \$2,098.06) and that the said claim has been denied; that thereupon the collector was proceeding by warrant of distraint to collect the said taxes, together with penalty and interest, by levying upon and selling the property of the complainant; and defendant having made his motion to dismiss the action for the want of jurisdiction, on the ground that the court is forbidden by law to restrain the collection of tax, it is now on this the 22 day of August, 1921, to which date the hearings have been adjourned, adjudged and decreed that motion to dismiss be denied; that the tax assessed is illegal, erroneous, and unauthorized by the Constitution



of the United States; that the act of Congress which authorized the said assessment is invalid, in that it undertakes to exercise powers which are not delegated to the United States by the Constitution, but reserved to the States respectively.

Thereupon it is decreed that the temporary restraining order heretofore issued, forbidding the defendant to proceed to collect the said assessment, is hereby made permanent.

The clerk will enter this decree at Charlotte and certify copies to the complainants' attorneys and also to the U. S. attorney of this district who represents the defendants.

This the 22nd day of August, 1921.

JAMES E. BOYD,  
*U. S. District Judge.*

A true copy: Test:

[SEAL.]

R. L. BLAYLOCK,  
*Clerk.*

By E. S. WILLIAMS,  
*Deputy Clerk.*

And thereafter an opinion was rendered by J. E. Boyd, judge, U. S. court, in said cause, which opinion is in words and figures as follows, to wit:

In the District Court of the United States for the Western District of North Carolina, at Greensboro,

JOHN J. GEORGE, TRADING AND DOING BUSINESS  
as Vivian Cotton Mills, and Vivian Spin-  
ning Co., complainants,

*vs.*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE  
for the district of North Carolina, and  
Claude Moser, one of his deputies, defend-  
ants,

} Equity.

Before Hon. Jas. E. Boyd, U. S. district judge for the Western District of North Carolina.

Argued the 16th day of August, 1921; decided the 22nd day of August, 1921.

John M. Robinson and C. B. Fether, of Charlotte, North Carolina, attorneys for the complainant.

Stonewall Jackson Durham, United States attorney for the Western District of North Carolina, attorney for the defendants.

STATEMENT.

The complainant is John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company, operating plants for the manufacture of cotton goods at Cherryville, in the

county of Gaston, in this district. The defendants are J. W. Bailey, collector of internal revenue for the District of North Carolina, and Claude Moser, one of his deputies.

On the 9th of November, 1920, the Commissioner of Internal Revenue made an assessment for taxes against the complainant for \$2,098.06, to be due the 19th of November, 1920. Penalty at the rate of five per cent and interest at the rate of one per cent per month for failure to pay the tax assessed by the date it was due was included. Upon notice of the assessment to the complainant, appeal was made by him to the Commissioner of Internal Revenue to remit the same. The appeal being upon the form prescribed by the Treasury Department and termed a claim for abatement. This claim was denied by the Commissioner of Internal Revenue, and thereupon the defendant J. W. Bailey, through his deputy Claude Moser, was about to proceed by warrant of distraint to subject the property of complainant to sale to satisfy the said assessment.

The said assessment was made against the said complainant by the Commissioner of Internal Revenue under authority, as it is claimed, of Title XII, section 1200, of the act of Congress approved February 24th, 1919. This section is set out in the opinion.

The defendants have filed an answer denying some of the several allegations of the bill, but admitting the assessment for the amount set forth; that claim for abatement has been filed and denied; and that the collector, through his deputy, is proceeding by warrant of distraint to collect the taxes with penalty and interest.

The purpose of complainant's bill is to restrain the collector and his deputy from proceeding to levy upon and sell his property to satisfy the assessment.

#### 44     *BOYD, District Judge.*

In order to pass intelligently upon the questions involved in this case reference is had to certain of the provisions of two Federal statutes and one statute of the State of North Carolina. The first of the Federal statutes to be referred to is what is known as the Owen-Keating Act, which was passed by the 64th Congress and will be found in vol. 39, U. S. Statutes at Large, chapter 432, page 675. It is entitled "An act to prevent interstate commerce in the products of child labor, and for other purposes." The following, quoted from that act, is all that is deemed necessary to reproduce here:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no producer, manufacturer, or dealer shall ship, or deliver for shipment, in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity, the product of any mill, cannery, workshop, factory, or manufacturing establishment, situated in the United

States, in which within thirty days prior to the removal of such product therefrom children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock post meridian, or before the hour of six o'clock ante meridian: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any article or commodity under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipment or deliveries for shipment of any such article or commodity before the beginning of said prosecution."

This statute was before the Supreme Court of the United States upon an appeal from a decision of this court to the effect that it is beyond the powers delegated by the Constitution to the United States to regulate labor within a State by an act of Congress. This decision was affirmed by the Supreme Court, in the case of *Hammer vs.*

45 Dagenhart, reported in 247 U. S., 251. Mr. Justice Day in delivering the opinion of the court among other things said:

"In interpreting the Constitution it must never be forgotten that the Nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the National Government are reserved. *Lane County v. Oregon*, 7 Wall., 71, 76. The power of the States to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent and has never been surrendered to the General Government. *New York v. Miln*, 11 Pet., 102, 139; *Slaughter House Cases*, 16 Wall., 36, 63; *Kidd v. Pearson*, *supra*. To sustain this statute would not be in our judgment a recognition of the lawful exertion of congressional authority over interstate commerce, but would sanction an invasion by the Federal power of the control of a matter purely local in its character, and over which no authority has been delegated to Congress in conferring the power to regulate commerce among the States."

It is held in *Dartmouth College v. Woodward*, 4 Wheat., 518: "That the framers of the Constitution did not intend to restrain the States in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us is not to be so construed may be admitted."

It was contended by the Government in the Dagenhart case, that the interstate commerce provision of the Constitution which authorizes Congress to regulate commerce with foreign nations, between the several States, and with the Indian tribes, conferred the power which made the act valid, but the Supreme Court overruled this contention in most emphatic terms, as will be observed from this further quotation from the Dagenhart opinion:

"The control by Congress over interstate commerce can not authorize the exercise of authority not entrusted to it by the Con-

stitution. *Pipe Line Cases*, 234 U. S., 548, 560. The maintenance of the authority of the States over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the federal power in all matters entrusted to the Nation by the Federal Constitution."

There can be no possible misunderstanding as to the meaning of this decision, for it is distinctly declared, that the right to regulate labor within a State is a State function and that Congress is forbidden by the Constitution to interfere with it.

46 After the *Dagenhart* decision Congress has undertaken to avoid its effect by enacting section 1200 of Title XII of "An act to provide revenue and for other purposes," approved February 24th, 1919 (40 Stat. at Large, part one, page 1057). This section is in the following language:

"That every person (other than a bona fide boys' or girls' canning club recognized by the Agricultural Department of a State and of the United States) operating (a) any mine or quarry situated in the United States in which children under the age of sixteen years have been employed or permitted to work during any portion of the taxable year; or (b) any mill, cannery, workshop, factory, or manufacturing establishment situated in the United States in which children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen and sixteen have been employed or permitted to work more than eight hours in any day or more than six days in any week, or after the hour of seven o'clock post meridian, or before the hour of six o'clock ante meridian, during any portion of the taxable year, shall pay for each taxable year, in addition to all other taxes imposed by law, an excise tax equivalent to ten per centum of the entire net profits received or accrued for such year from the sale or disposition of the product of such mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment."

It will be noted that this section is practically a reproduction of the material provisions of the *Owen-Keating* bill. The only difference being that under that bill the product of an establishment using child labor was forbidden transportation in interstate commerce, and in the present act an establishment using child labor contrary to its provisions is subject to a tax of ten per centum upon the net income derived from its operations.

The question which suggests itself in the outset is, whether the last act is intended to raise revenue. It will scarcely be insisted that such is its object. It is more reasonable to conclude that the purpose of the tax feature is to impose a penalty in order to deter the violation of the child labor provision. It would be a rather nonproductive revenue system which imposed taxes, the effect of which would be to annihilate the subject of taxation, or to prohibit the exercise of the privilege for which the tax is levied.

In case of *Collins v. New Hampshire*, 171 U. S., 30, 33-34, the following is found:

"The direct and necessary result of statute must be taken into consideration when deciding as to its validity, even if that result is not in so many words either enacted or distinctly provided for. In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect."

This doctrine is reaffirmed in the *Dagenhart Case*, *supra*.

In what are called the *Pipe Line cases*, 234 U. S., 548, 560, the Supreme Court used this language which is quoted before in this opinion:

"The control by Congress over interstate commerce can not authorize the exercise of authority not entrusted to it by the Constitution."

If that principle applies to the authority of Congress in the regulation of commerce, there is no reason why it should not apply in raising revenue by taxation, for the power delegated to the United States to levy and collect taxes is no more elastic than the power delegated by the commerce provision. As bearing upon this point the following is quoted from the opinion in *Veazie Bank v. Fenno*, 75 U. S., 533, which was a case involving the right of the Federal Government to levy taxes upon State banks.

"There are indeed certain virtual limitations, arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States, or if exercised for ends inconsistent with the limited grants of power in the Constitution."

By the Constitution the Federal Government is invested with power by congressional legislation, "to lay and collect taxes, duties, imposts, and excises, to pay the debt, and provide for the common defense and general welfare of the United States." But nowhere in the Constitution can be found authority to the National Government to regulate labor within the States.

48 Upon consideration of the prime question in this case and the authorities bearing upon it, the conclusion seems to be irresistible that the National Legislature cannot do indirectly, that which it is forbidden by the Constitution to do directly. And it being definitely determined by the highest court of the land that the right to regulate labor is inherent in the States, then Congress can not intervene to control it, either by way of interstate commerce, efforts to levy taxes, or by any other method.

Having disposed of the two Federal statutes which were to be discussed in passing upon the question involved in the case in hand, it is deemed expedient to comment upon the statute of the State of North Carolina in regard to child labor. This statute can be found

in the Public Laws of North Carolina, session of 1919, chapter 100, 274. Section five of the act is as follows:

"No child under the age of fourteen years shall be employed or permitted to work in or about or in connection with any mill, factory, cannery, workshop, manufacturing establishment, laundry, bakery, mercantile establishment, office, hotel, restaurant, barber shop, bootblack stand, public stable, garage, place of amusement, brickyard, lumberyard, or any messenger or delivery service, except in cases and under regulations prescribed by the commission hereinafter created: *Provided*, The employments in this section enumerated shall not be construed to include bona fide boys' and girls' canning clubs, recognized by the agricultural department of this State; and such canning clubs are hereby expressly exempted from the provisions of this act."

The child labor law of North Carolina is made a feature of the public school system of the State, thus concentrating the means for the promotion of the mental and the physical welfare of children under one harmonious plan, to be carried out by the agencies provided for in the act, the purposes of which are to foster the health and physical development of children and at the same time train their minds for future usefulness, and its provisions appear ample to accomplish these ends.

By comparing the Federal and State statutes it will be readily seen that the latter affords as much protection to the health and physical condition of children as the former, and, as stated before, the State act coordinates its purpose to promote physical welfare, with provisions for mental training, and further, an important provision in the State statute is the punishment provided for its violation, instead of undertaking, as the Federal act, to make the income of an establishment using child labor illegally the subject of taxation, it denounces as a criminal offense the violation of its provisions and subjects the offender to a fine or imprisonment, or both, at the discretion of the court.

There can be no doubt as a general proposition that the average person is more heedful respecting laws constituting crime than they are those creating civil liability. For this reason the State statute is undoubtedly more capable of prompt execution than the act of Congress, and the expenses incident to it when compared to that of the Federal plan must necessarily be a great deal less, but however that may be, the burden incident to the enforcement of the State law is not a drain upon the Federal Treasury but is borne by the States.

It is admitted that Congress engaged in a laudable undertaking when it set about to regulate child labor in the country. It began with the enactment of the Owen-Keating law, September 1st, 1916, which was followed February 24th, 1919, by the passing of the statute now under consideration. There can be no criticism of the purposes our representatives had in view in the enactment of these statutes, for it is evident that they were prompted by the highest motives of humanity, accompanied with a desire to protect children from

mental and physical deterioration, in order to maintain a standard of manhood and womanhood fully prepared to respond to the obligations and duties resting upon the citizens of this country.

50 There could be no reasonable ground for dissenting to what Congress has done if the action came within the scope of power delegated to the United States by the Constitution, but, as before stated, the Supreme Court has put an end to this question and has decided in terms not susceptible of difference of opinion, that Congress is not authorized to deal with this subject with the view of Federal control, but that such is the function of the several States each to proceed in its own way.

The State of North Carolina has undertaken to utilize the power reserved to it by the Constitution of the United States to control child labor within its borders, and through the general assembly a law which is deemed wise, regulating this character of labor, has been enacted and provision made for its efficient enforcement.

In the presentation of this case counsel for the defendant moved to dismiss complainant's bill, relying upon section 3224 of the Revised Statutes, which is in the following language:

"No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

It is insisted that this statute renders the courts powerless to intervene where the Government is proceeding under assessments to collect taxes, no matter whether the tax is legal or illegal, well founded or erroneous, constitutional or unconstitutional. If this position can be maintained, then Congress, under the guise of raising revenue by taxation, can overcome all constitutional barriers.

The position taken by the counsel for the defendant does not appeal to the court here as being based upon sound reason or intelligent construction. The tenth amendment to the Constitution reads as follows:

52 The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

From time to time the courts have been called on to construe the meaning of this amendment, and almost without exception it has been held that the powers of the National Government are *are* limited to those delegated. This construction is fortified by the ninth amendment which reads as follows:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage other retained by the people."

This amendment must be construed to mean that in framing the Constitution the sovereign people of the several States, ceded to the General Government certain designated powers, leaving all other rights and powers such as are necessary to maintain our dual system of government to the States respectively and to the people.

This court fully realizes the necessity for the maintenance by all available means of healthful conditions among children, and the obligation which rests upon us as a provident people, to rear men

and women well equipped mentally and physically for future usefulness is profoundly appreciated. There is ample authority somewhere in our governmental system to meet this obligation and discharge this duty. The Supreme Court has declared that the duty devolves upon the States respectively as one of reserved powers. It would seem therefore that the States in their efforts to meet this obligation should be left undisturbed by Federal intervention.

In keeping with the line of the foregoing discussion the conclusion is that the defendants' motion to dismiss for the want of jurisdiction should be denied. That in passing the act in question Congress exceeded the powers delegated to the United States by the

Constitution; that the assessment against the complainant is unwarranted and is not a tax such as contemplated by law to raise revenue, but may be termed a penalty to prevent the violation of the provisions of the act, which could not be enforced by assessment and warrant of distraint, even if the act was valid; that he is entitled to the relief prayed for in his bill, and that the temporary restraint heretofore granted should be made permanent.

And thereafter, an assignment of errors was filed by defendants appellants.

Said assignment of errors is in words and figures as follows, to wit:

In the District Court of the United States for the Western District of North Carolina.

JOHN J. GEORGE, TRADING AND DOING BUSINESS  
as Vivian Cotton Mills, and Vivian Spinning  
Company, plaintiffs, respondents

*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE,  
and Claude Moser, deputy collector of internal  
revenue, defendants, appellants.

In equity. Assignment of errors.

The defendants, J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue, applying by counsel for an appeal to the Supreme Court of the United States and presenting herewith an appeal bond, now, as their assignment of errors, shows the court erred:

1. In not sustaining defendants' motion to dismiss the bill, for that on the face of the bill of complaint, it is an action seeking to enjoin the collection of taxes, and the court is without jurisdiction to hear and decide the issues raised.

2. In not sustaining the motion to dismiss the bill as prayed in defendants' answer.

3. In not entering a decree dismissing the bill.

4. In not upholding the validity of the revenue act of 1918, commonly known as the child-labor act, and particularly Title XII



of said act of Congress and section 1200 of said Title XII, approved February 24th, 1919, as set forth in the bill.

5. In enjoining the said defendants, J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue, as prayed in the bill.

6. In decreeing that the tax assessed against the plaintiffs herein is illegal, erroneous, and unauthorized by the Constitution of the United States.

7. In adjudging that the act of Congress, which authorized the said assessment is involved, in that it undertakes to exercise powers which are not delegated to the United States by the Constitution but reserved to the States.

8. For refusing defendants' prayer to withhold the temporary restraining orders issued in this cause.

F. A. LINNEY,

*U. S. Attorney and Counsel for Appellants.*

And thereafter, to wit on 8th day of October, 1921, notice of petition for appeal was filed by F. A. Linney, United States attorney and counsel for defendants, appellants, said notice of petition for appeal, dated October 8, 1921, being in words and figures as follows, to wit:

In the District Court of the United States for the Western District of North Carolina.

JOHN J. GEORGE, TRADING AND DOING BUSINESS  
as Vivian Cotton Mills, and Vivian Spinning  
Company, plaintiffs, respondents

*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE,  
and Claude Moser, deputy collector of internal  
revenue, defendants, appellants.

Notice of petition  
for appeal.

*To John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company, respondents:*

You are hereby notified that the above-named defendants, appellants, J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue, will petition the Hon. James E. Boyd, U. S. district judge, at Greensboro, N. C., on October 10, 1921, at 12 o'clock for an appeal to the Supreme Court of the United States from an order or decree entered in said cause on the 22nd day of August, 1921, from which they conceive themselves aggrieved.

F. A. LINNEY,

*U. S. Atty.,*

*Attorney & Counsel for Defendants, Appellants.*

Service of the above notice hereby accepted this 8th day of October, 1921.

JOHN M. ROBINSON.

59 And on the 11th day of October, 1921, a motion for appeal was filed.

Said motion for appeal, filed October 11, 1921, is in words and figures as follows, to wit:

60 In the District Court of the United States for the Western District of North Carolina.

JOHN J. GEORGE, TRADING AND DOING BUSINESS  
as Vivian Cotton Mills, and Vivian Spin-  
ning Company, respondents,

*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVE-  
nue, and Claude Moser, deputy collector of  
internal revenue, defendants, appellants.

} Appeal and allowance.

In equity.

The above name defendants, J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue, conceiving themselves aggrieved by the order or decree entered on the 22nd day of August 1921, in the above entitled proceeding, doth hereby appeal from said order or decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and they pray that this their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said order or decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

J. W. BAILEY & CLAUDE MOSER,

By F. A. LUIRY,

*U. S. District Atty. & Counsel for Appellants.*

GREENSBORO, *October 11, 1921.*

And now, to wit, on October 11th, 1921, it is ordered that the appeal be allowed as prayed for.

J. E. BOYD,

*District Judge for Western District of North Carolina.*

61 And on the 11th day of October, 1921, citation was issued to said plaintiffs.

Said citation, issued on October 11, 1921, is in words and figures as follows, to wit:

62 In the District Court of the United States for the Western District of North Carolina.

JOHN J. GEORGE, TRADING AND DOING BUSINESS  
as Vivian Cotton Mills, and Vivian Spinning  
Company, respondents,

*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE,  
and Claude Mosey, deputy collector of inter-  
nal revenue, appellants.

Citation on ap'eal.

*To John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company, respondents:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on Tuesday, the 8th day of November, next, pursuant to an appeal, filed in the clerk's office of the District Court of the United States, for the Western District of North Carolina, wherein J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue, are appellants, and John J. George, trading and doing business as Vivian Cotton Mills and Vivian Spinning Company are respondents, to show cause, if any there be, why the judgment in the said appeal of error mentioned should not be corrected, and speedy justice should not be done to the parties on that behalf.

Witness the Hon. James E. Boyd, judge of the District Court of the United States, this 11 day of October, in the year of our Lord One thousand and nine hundred and twenty-one.

JAS. E. BOYD,

*Judge of the District Court of the United States  
for the Western District of North Carolina.*

Service of the above citation on appeal accepted, this the 11th day of October, 1921.

C. B. FETNER.

63 And on the 13 day of October, 1921, a stipulation was entered into.

Said stipulation filed October 14, 1921, is in words and figures as follows, to wit:

64 In the District Court of the United States, for the Western District of North Carolina.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS  
Vivian Cotton Mills, and Vivian Spinning Com-  
pany, plaintiffs, respondents,

*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE, AND  
Claude Moser, deputy collector of internal rev-  
enue, defendants, appellants.

Stipulation of  
counsel.

In the above-entitled case, it is agreed and stipulated by and between the appellant and counsel for the appellees, that:

1. Bill of complaint of John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company, plaintiffs.
2. Prosecution bond, dated July 6, 1921, John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company, and T. C. Summer, principals and surety.
3. Subpœna in equity, dated July 7, 1921, served on J. W. Bailey, collector of internal revenue and Claude Moser, deputy collector of internal revenue.
4. Bond for restraining order, dated July 7, 1921.
5. Temporary restraining order, dated July 8, 1921.
6. Affidavit of H. D. George, dated July 7, 1921.
7. Affidavit of W. J. Friday, dated July 7, 1921.
8. Affidavit of J. D. Frye, dated July 7, 1921.
9. Affidavit of L. W. McGinnas, dated July 7, 1921.
10. Affidavit of H. D. George, dated July 7, 1921.
11. Order restraining defendants from levying upon or selling the property of the complainants until further order of the court, signed by J. E. Boyd, U. S. judge, July 16, 1921.
12. Amendment to bill of complaint of John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company, plaintiffs.
13. Answer of defendants, J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue.
14. Order continuing cause until Monday, August 8, 1921, dated August 1, 1921, signed by J. E. Boyd, U. S. judge.
15. Order allowing defendants to withdraw demurrer, and continuing cause until Monday, August 8, 1921, signed by J. E. Boyd, U. S. judge, dated August 1, 1921.

16. Motion to dismiss cause of action, dated August 5, 1921, signed by U. S. attorney.
17. Order adjourning cause until Monday, August 15, 1921, signed by J. E. Boyd, U. S. judge, August 8, 1921.
18. Order adjourning cause until Monday, August 22, 1921, signed by J. E. Boyd, U. S. judge, dated August 15, 1921.
19. Order decreeing that temporary restraining order be made permanent, forbidding defendant to proceed to collect said assessment, dated August 22, 1921, signed by Judge J. E. Boyd.
20. Opinion of J. E. Boyd, U. S. judge.
21. Assignment of errors of defendants appellants, J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue.
22. Notice of petition for appeal, filed October 8, 1921, by U. S. attorney and counsel for defendants appellants.
23. Motion for appeal, filed      day of October, 1921, by defendants appellants.
24. Citation on appeal, signed by J. E. Boyd, U. S. judge.
25. Stipulation.
26. Clerk's certificate.

shall constitute the complete record for the Supreme Court of the United States.

This the 14 day of October, 1921.

F. A. LINNEY,  
*Asst. United States Attorney for the*  
*Western District of North Carolina.*

By HAMILTON C. JONES,  
C. B. FETNER,  
JOHN M. ROBINSON,  
*Attorneys for Plaintiffs Appellees.*

66      And afterwards, to wit, on the 8 day of October, 1921, an election as to printing was filed.

Said election as to printing is in words and figures as follows, to wit:

67      In the District Court of the United States for the Western District of North Carolina.

JOHN J. GEORGE, TRADING AND DOING BUSINESS AS VIVIAN Cotton Mills, and Vivian Spinning Company, respondents,

*against*

J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE, AND Claude Mosey, deputy collector of internal revenue, appellants.

Now come the defendants by their attorney, F. A. Linney, United States attorney for the Western District of North Carolina, and

elects that the record herein be printed by the clerk of the Supreme Court.

This October 8, 1921.

F. A. LINNEY,

*United States Attorney and Counsel for Appellants.*

68 UNITED STATES OF AMERICA, *Sct.:*

I, R. L. Blaylock, clerk of the District Court of the United States for the Western District of North Carolina, do certify that the above and foregoing is a full, true, and complete copy of the record, assignment of errors, and all proceedings in the case of John J. George, trading and doing business as Vivian Cotton Mills, and Vivian Spinning Company against J. W. Bailey, collector of internal revenue, and Claude Moser, deputy collector of internal revenue, as fully as the same appears on file and of record in my office.

Witness my hand as clerk and the seal of said court. Done at office in Charlotte, North Carolina, this 14th day of October, A. D. 1921.

R. L. BLAYLOCK,

*Clerk, U. S. District Court.*

(Endorsed on cover:) File No. 28,545. W. North Carolina D. C. U. S. Term No. 590. J. W. Bailey, collector of internal revenue, et al., appellants, vs. John J. George, trading and doing business as Vivian Cotton Mills, et al. Filed October 19th, 1921. File No. 28,545.

